



March 25, 2002

Mr. Ronald D. Stutes
Brown & Hofmeister
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2002-1475

Dear Mr. Stutes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162389.

The City of McKinney, which you represent, received a request for records relating to the McKinney Municipal Airport Board meetings, and for certified agenda or tape recordings or other records of closed executive sessions of the McKinney Municipal Airport Board. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Initially, we note that you have not submitted any information responsive to the first part of the request. You have indicated that you object to disclosing documents in first part of the request "to the extent that the documents ... are also described by part 2." You have not, however, indicated that such information does not exist. Therefore, to the extent information responsive to this aspect of the first part of the request exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. See Gov't Code §§ 552.301(a), .302.

Section 551.104(c) provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Gov't Code § 551.104(c). Such information cannot be released to a member of the public in response to an open records request. See Open Records Decision No. 495 (1988). Therefore, to the extent that the McKinney Municipal Airport Board maintains records that are responsive to the present request for closed-session "certified agenda or tape recordings or other records," those records must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

In summary, we conclude that the information indicated in the second part of the request must be withheld from disclosure. The information in the first part, to the extent that it is described by the second part of request, must also be withheld.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



VG Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 162389

c: Mr. Michael Zweber
Gardere Wynne Sewell
300 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201-4761
(w/o enclosures)